VOLUNTARY LABOR ARBITRATION

In The Matter of the Grievance

-Between-

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 1117, AFL-CIO

and

CITY OF TORRANCE

Re: Vacation Leave of Frank McCoy

ARBITRATOR'S OPINION AND AWARD

REPRESENTING THE PARTIES:

For the Union:	Anthony R. Segall, Esq. & Emma Leheny, Esq. Rothner, Segall & Greenstone Attorneys at Law 510 South Marengo Avenue Pasadena, California 91101-3115
For the Employer:	Tatia Strader, Esq. Deputy City Attorney City of Torrance 3031 Torrance Boulevard Torrance, California 90503
ARBITRATOR:	Jill Klein Attorney at Law 2470 Lambert Drive Pasadena, CA 91107-2507

INTRODUCTION

The above matter was heard on March 20, 2002 at the City Hall of Torrance, California. All parties to the dispute were present and were given the opportunity to present testimonial and documentary evidence, to call witnesses to be examined and cross-examined under oath, and to advance arguments regarding their respective positions. The parties stipulated that the matter properly was before the Arbitrator for binding arbitration.

The parties elected to submit post-hearing briefs. Both briefs were received by the Arbitrator on April 30, 2002, at which time the record of these proceedings closed. The parties agreed that the decision of the Arbitrator would be due within thirty days of the close of the record.

ISSUE S

The parties stipulated that the issues to be decided by the Arbitrator are as follows:

Did the City violate the Memorandum of Understanding by denying the Grievant vacation leave for January 8, 2001 and January 22, 2001; if so, what is the appropriate remedy?

DECISION

I find that the City did not violate the Memorandum of Understanding by denying the Grievant vacation leave for January 8, 2001, and January 22, 2001.

APPLICABLE PROVISIONS OF THE MEMORANDUM OF UNDERSTANDING

SECTION 1.2 MANAGEMENT RIGHTS

The City shall have the exclusive right to determine the mission of each of its departments, commissions, boards, and agencies, set levels of services to be performed, direct its employees, exercise control and discretion over its organization and operations, and determine the methods, means and personnel by which the City's operations are to be conducted, and the levels of services met, and carry out its mission

in emergencies, provided, however, that the exercise of these rights does not preclude employees and their representatives from consulting or raising grievances about the practical consequences that decisions on these matters may have on wages, hours and other terms and conditions of employment.

SECTION 4.2 VACATION

....

c) Scheduling:

The time of taking vacation shall be determined by the employee with the approval of the department head, subject to review by the City Manager. An employee may take vacation only in increments of full days or shifts unless department head approval is given for smaller increments.

....

SECTION 8.3 THE GRIEVANCE PROCEDURE

....

d) Fourth Step: Arbitration

....

3) The decision of the Arbitrator shall be final and binding. Such decision shall not add to or otherwise modify the language of the Agreement.

....

DISCUSSION

Grievant Frank McCoy is employed as a Senior Groundskeeper by the Respondent City of Torrance, California. The Grievant has worked for the City for approximately thirty years. He has spent the past fourteen years employed by the Department of Parks and Recreation. The Grievant accrues vacation leave at the rate of 17.33 hours per month.

The Grievant is assigned to the mowing crew, which is part of the Parks Services Division. The mowing crew is responsible for mowing the grass in City parks,

parkways, and medians, and for doing miscellaneous chores, such as weed abatement. The mowing crew works a 6:30 a.m. to 4:00 p.m. shift, alternating between a Monday through Friday and Monday through Thursday work week. The entire mowing crew is off work every other Friday; thus, on alternate Fridays, none of its members reports to work.

On or about December 26, 2000, the Grievant submitted a request to take vacation leave on Friday, January 8, 2001 (City Exhibit 2, Attachment "C"). On December 28, 2000, the supervisor of the Grievant denied the request, citing the following reasons:

> A pattern of scheduling vacation on a bi-weekly basis in order to achieve a four-day work week is not acceptable and will not be approved. To approve such a request would hinder the crew's ability to meet its commitments and place an unnecessary burden on the rest of the crews.

(City Exhibit 2, Attachment "C"). The parties stipulated that the Grievant also submitted a request to take vacation leave on Friday, January 22, 2001, and that said request was denied for the same reasons as the first request. The parties further stipulated that because the denial of the requests caused the Grievant to exceed the maximum amount of leave that he was permitted to accrue, he forfeited 11.95 hours of vacation leave.

The Park Services Division Rules and Regulations for All Employees (City Exhibit 9) provide the following with regard to vacation leave policy:

> The employee with the most Departmental seniority within his/her assigned crew shall have priority over others in the same crew when the vacation requests are considered at the beginning of each year. All subsequent vacation schedules will be determined on a first come, first served basis. All vacations will be scheduled using seniority as a basis for first consideration
>
> All requests for vacation leave - be it one hour, one day or more - shall be made in writing and approved by the employee's supervisor prior to taking the time off....
>
> At no time will there be more than one employee on vacation from a crew, unless the supervisor determines that there would be no effect upon the crew's work. Those employees who wish to split their vacation or take it at short intervals throughout the year, may do so as long as it does not conflict with other employee vacations....

> Where vacation requests do not interfere with other employee vacations or Division manpower shortages, they will normally be approved. However, if the crew has other employees absent due to reasons beyond Management's control, a person's vacation may be postponed until other arrangements can be made.
>
> ....

The Union asserts that the City exceeded its authority under Section 4.2(c) of the Memorandum of Understanding, *supra*, and the Parks Services Division Rules and Regulations regarding vacation leave, when it denied the leave requests of the Grievant. The Union contends that the City has the burden to substantiate that the denial of the requests was reasonable, and that it cannot meet said burden merely by citing an unacceptable pattern of vacation scheduling by the Grievant. The Union also argues that the City did not give additional reasons for the denial until the subject hearing, and that such reasons should be disregarded because they were not substantiated by the evidence of record; furthermore, to accept justifications raised so late in the grievance process would undermine the integrity of these proceedings. The Union asserts that the grievance should be sustained, and that the Grievant should have the 11.95 hours of forfeited vacation leave restored to him.

The City contends that management may deny a vacation request based upon a showing that the operations of the mowing crew would be impaired if the request were granted. The City urges that the supervisor of the Grievant acted reasonably, in good faith, and in conformity with the Memorandum of Understanding when he denied the requests for vacation leave. The City emphasizes that management has a past practice of being extremely flexible and granting vacation leave whenever possible; however, manpower shortages precluded granting the requests at issue. The City therefore urges that the grievance be denied.

Senior Park Maintenance Supervisor Thomas Dryer is the supervisor of the mowing crew, and in said capacity made the decision to deny the leave requests of the Grievant. He stated that his decision was based upon the following: As Senior Groundskeeper, the Grievant is responsible for taking instructions from Mr. Dryer and making sure that job assignments are completed satisfactorily and on time. When the Grievant is absent, goals cannot be achieved. The mowing crew is supposed to consist of eleven employees; however, in January of 2001, there was a manpower shortage because one position had been vacant for two and a half years, three employees were on industrial leave, and one employee was on medical leave. Of those employees available to work, one already had been granted leave for January 8th when the Grievant submitted his request. In the face of such low staffing levels, permitting the Grievant to

take alternate Fridays off would have caused the crew to constantly fall behind schedule. The crew also was scheduled to work on the planned renovation of Columbia Park during the time that the Grievant had requested leave, and the project had to be finished before soccer season started. Columbia Park is a major facility among the 32 parks in the City. The mowing crew was going to be responsible for loosening soil, bringing in additional soil to even playing fields, re-seeding, and leveling jogging paths. At least five members of the crew were required to work on the park renovation, while the balance of those working would take care of the mowing and other chores normally done by the crew as a whole.

Mr. Dryer further testified that: In the past, in approximately 1999, the Grievant had inundated him with requests to work a four-day week, and Mr. Dryer had tried to work with him. As a result, the mowing crew always had been behind schedule, and the level of service being provided to the City had dropped. Mr. Dryer had suggested that the Grievant take his vacation leave in blocks, which would have permitted Mr. Dryer to use workers from other crews to fill in; when the Grievant took leave for only one day at a time, the mowing crew alone had to make up for his absence. Subsequent to denying the requests at issue, he granted all of the other leave requests of the Grievant for 2001 until December of that year, when, based upon mowing requirements, he disapproved a request for leave on December 14th. Documentary evidence (City Exhibit 10) substantiates that in 2001, the Grievant was granted approximately 26 days of vacation leave on fourteen different occasions, and denied leave only on December 14th.

Mr. Dryer also testified that: In addition to the foregoing, he had to consider the needs of the Parks Services Division as a whole. His primary job is to make sure that the City's parks are maintained in a safe and orderly fashion. The Division has a liberal leave policy and an effort is made to grant the leave requests of its employees; however, such requests cannot always be granted because goals must be met. The mowing crew meets its two-week goals approximately seventy percent of the time. When the lawns are not mowed on schedule, it creates more of a burden on crew members when the job finally is done, and the costs of doing such work increase accordingly; furthermore, if lawns in the division are not mowed, it becomes a safety issue that affects the athletic teams that use them.

Parks Services Administrator Mike Wilson is the supervisor of Mr. Dryer. He testified that: He is responsible for coordinating the crews in the Parks Services Division, and for making sure that the goals of the Division, Department, and City are met. The mowing crew is responsible for ensuring health and safety at City facilities, and for maintaining the appearance of parks, which is considered an important part of the City's strategic plan. Columbia Park has five soccer fields and is used extensively by 2,500 to 3,000 children. Its turf is brutalized as a result; therefore, renovation time must be carefully scheduled to take advantage of the brief window of opportunity when

it is possible to get the work done. The renovation of the park in 2001 thus was considered a major priority that transcended the other work of the Division.

Mr. Wilson further testified that: Although it is an extreme rarity for a leave request to be denied, the needs of the Division must be taken into account. Mr. Dryer coordinates manpower for the entire Division; therefore, it was appropriate for him to consider the needs of the Division as a whole when making the decision whether to grant the leave requests of the Grievant. It is difficult to meet mowing crew goals when one of the crew members works a four-day week every week; the schedule of the crew is based on a five-day work week every other week.

The Grievant testified that: As a Senior Groundskeeper, he is responsible for a one-man crew. He has preferred to work a four-day week for the past two and a half years. Before December of 2000, his requests were granted. In general, Mr. Dryer has tried to work with him and accommodate his requests, although Mr. Dryer did not present him with any alternatives when his requests for vacation leave for January 8th and 22nd were denied.

The Grievant further testified that: On many occasions, he has worked on a crew that was short one employee for the day, and it has never resulted in extra assignments or having to mow lawns for longer than usual. Because he is the move-up supervisor, he would have been aware if health and safety problems had been created for employees or the public as a result of a manpower shortage, and none has been apparent. If grass is not mowed often enough, the only problem created is one of appearance. If a mowing assignment is not completed, it customarily is finished the next day. Although the Columbia Park renovation had been scheduled to begin earlier, it ultimately had to be postponed until the second or third week of January due to rain. No workers subsequently had been pulled from other areas to help with the delayed project.

I find that Section 4.2(c) of the Memorandum of Understanding permits employees to choose on which days they wish to take vacation leave, subject to supervisory approval. I further find that the Park Services Division Rules and Regulations pertaining to vacation leave provide that at the beginning of each year, vacation leave requests shall be granted on the basis of Departmental seniority within each crew, while subsequent requests are to be granted on a first come, first served basis. I find that the regulations further provide that within each crew, no more than one employee at a time will be granted vacation leave unless a supervisor determines that the work of said crew would not be adversely affected by the absence of more than one employee. I also find that the Rules and Regulations provide that manpower shortages within the Division also may be used as a basis for denying requests for vacation leave.

Although the Union asserts that prior to the subject hearing the City's only justification for denying the leave requests of the Grievant was an unacceptable pattern

of leave scheduling that would have resulted in repeated four-day work weeks, I find that such is not the case. As set forth above, in his initial denial of the requests on December 28, 2000, Mr. Dryer also cited the burden that would be placed on the rest of the mowing crew, and the inability of said crew to meet its commitments, as reasons for denying the requests. In his Step 1 Response to Grievance dated January 25, 2001 (City Exhibit 4), Mr. Dryer also wrote that,

> The Grievant has been well aware of the crew's shortages, commitments, and workload. If this crew could function with a four day a week employee, then it would lack economical sense to have a full time employee when a part time position would suffice.

Based upon the foregoing, I find that the City has consistently cited manpower shortages and an inability of the mowing crew to meet its commitments as reasons for denying the requests of the Grievant, and that such reasons properly may be taken into account in evaluating whether said denial was reasonable.

I find that the Grievant's attempt to schedule four-day work weeks never was *per se* a reason for denying his leave requests; rather, Mr. Dryer cited the shortened work week as a factor that would adversely affect the ability of the mowing crew to complete its assignments. I find that in January of 2001, the mowing crew already was facing a shortage of available manpower due to illness and on-the-job injuries that prevented four of its eleven employees from reporting to work; in addition, one position on the crew had been vacant for two and a half years. I further find that with respect to the leave request for January 8th, another employee on the crew previously had been granted vacation leave for that day and pursuant to the Rules and Regulations cited above, the City was permitted to take previously granted leave into account in deciding whether to grant the request of the Grievant.

I find that when the Grievant submitted his leave request on December 26, 2000, Mr. Dryer anticipated that the renovation of Columbia Park, which was a major project requiring five members of the mowing crew, would be taking place on the days for which the Grievant had requested vacation leave. Although the project ultimately was delayed due to rain, I find that it was reasonable for Mr. Dryer to take the anticipated work schedule of the mowing crew into account in determining whether he could grant the leave request of the Grievant. I therefore find that under conditions as they existed on December 28, 2000, when the decision to deny the requests was made, it was reasonable for Mr. Dryer to conclude that he could not afford to be short any more crew members on January 8th and 22nd of 2001 when the renovation project was supposed to take place and when such project would have placed additional demands on the mowing crew, which still had to complete its usual work assignments.

Based upon the foregoing, I find that the City has proved by a preponderance of

the evidence that the reasons for denying the leave requests of the Grievant were based upon a rationale belief that the ability of the mowing crew to complete its assignments would be adversely affected to such a degree that said requests could not be granted. For said reason, I find that the Grievance should be denied.

AWARD

The Grievance is denied.

Respectfully submitted,

JILL KLEIN
Arbitrator

May 20, 2002
Pasadena, California